Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued as primary participants in the wrongful and illegal conduct and scheme charged herein.

90. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about COBRA, as specified herein.

91. These defendants employed devices, schemes and artifices to defraud and a course of conduct and scheme to conceal material adverse non-public information concerning COBRA and thereby engaged in transactions, practices and a course of business which operated as a fraud and deceit upon Plaintiffs, as alleged herein, in an effort to promote COBRA as a legitimate and "conservative" tax strategy, and to induce Plaintiffs to engage in the COBRA currency option transactions and to file tax returns claiming deductions based on loses and fees generated by COBRA.

92. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing the truth.

93. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, Plaintiffs engaged in the COBRA currency option transactions, filed tax returns reflecting losses from those transactions and other

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related losses as offsetting other income, including capital gains from the Stock Options Transactions, purchased and were issued shares in WSWP, Inc., and forewent other legitimate investment and tax savings opportunities. In engaging in COBRA, filing the tax returns accordingly, and foregoing other legitimate investment and tax savings opportunities, Plaintiffs relied directly or indirectly on the false and misleading statements made by the defendants and/or on the absence of material adverse information, which was known to or recklessly disregarded by defendants, but not disclosed in public statements by defendants to Plaintiffs and were damaged thereby.

94. At the time of said misrepresentations and omissions, Plaintiffs were ignorant of their falsity, and believed them to be true. Had Plaintiffs known of the truth concerning the COBRA scheme, which was not disclosed by defendants, Plaintiff would not have purchased or otherwise acquired their shares in WSWP, Inc., nor engaged in the COBRA transactions using proceeds from the Stock Options Transactions.

95. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

96. As a direct and proximate result of defendants' wrongful conduct, Plaintiffs suffered damages in connection with the purchase and sale of securities.

SECOND CLAIM
(Fraud - Against All Defendants)

97. Plaintiffs repeat and reallege each and every prior allegation of Paragraphs 1 through 96, inclusive, as if fully set forth herein.

98. Each Defendant is liable for the misrepresentations and omissions made by each of the other Defendants as a principal and co-conspirator.

99. In order to induce the Seippels to pay in excess of $1 million in fees, Brown & Wood, Ruble, and Deutsche Bank made numerous knowingly false affirmative representations and intentional omissions of material fact to the Seippels, as set forth above, including: (1) stating that the so-called COBRA transaction, under which a taxpayer simultaneously purchases and sells currency options, contributes them to a partnership, and takes various other steps as set forth above, entitles the taxpayer to include the cost of the long options purchased in his basis for calculating capital losses while ignoring the premiums received for the short options, thus offsetting capital gains realized in unrelated transactions; (2) failing to disclose that the COBRA strategy was not legitimate and that existing published authority, including Notices published by the IRS and court decisions, meant that purported losses arising from such transactions as the COBRA transaction were not properly allowable for tax purposes; (3) failing to disclose that if the Seippels filed tax returns claiming losses based on the COBRA transaction, they would be liable for penalties and interest and that the "opinion letters" provided by the Defendants would not protect the Seippels from penalties; (4) making and endorsing the statements contained in the opinion letter; (5) endorsing the statements contained in the oral advice given by Ernst & Young; (7) Defendants' statements that there was a reasonable prospect that the Seippels would earn a profit on the COBRA transaction; (8) failing to disclose that Deutsche Bank controlled whether a profit would be earned and the amount of any profit; and (9) failing to disclose that Defendants were promoters of COBRA and the implications of that fact.

100. The above affirmative representations and omissions made by each said Defendant were false, misleading, and material when made or omitted and said Defendants knew these representations and omissions to be false, misleading, and material when made or omitted with the intention that the Seippels would rely upon them in entering into the COBRA transaction and pay in excess of $1 million in fees.

101. In reasonable reliance on said Defendants' false representations and misleading omissions regarding the COBRA transactions, the Seippels paid over $1 million for tax and legal advice and to execute the COBRA transaction, did not avail themselves of legitimate tax savings opportunities and deductions, filed federal and state tax returns in 1999 and 2000 that reflected deductions for losses resulting from the COBRA transactions and the Defendants' fees and did not promptly amend those tax returns, thereby incurring over $1.7 million in penalties and interest and over $5 million in additional taxes, as well as other expenses. But for Defendants' intentional misrepresentations and material omissions described above, the Seippels would never have hired Defendants, nor Jenkens & Gilchrist and Ernst & Young, for advice on the COBRA strategy, engaged in the COBRA transactions, claimed the purportedly resulting losses on their income tax returns, or filed and signed their 1999 and 2000 tax returns prepared in accordance with or in reliance on Defendants' advice, failed to promptly amend said returns, and failed to avail themselves of legitimate tax savings opportunities and deductions.

102. After discovering said Defendants' fraud, Plaintiffs incurred and will continue to incur substantial additional costs in hiring new tax and legal advisors to rectify the situation.

103. As a result of said Defendants' conduct set forth herein, Plaintiffs have suffered injury in that (a) they have paid COBRA-related fees in an amount exceeding $1 million, (b) they have paid and will incur tax penalties and interest of over $1.7 million, (c) they have been required to pay taxes in an amount exceeding $5 million that they were promised they would not have to pay, (d) they lost in excess of $300,000 on the COBRA transaction itself, (e) they have paid, and will continue to incur, substantial additional costs in hiring new tax and legal advisors to rectify the situation, (f) they have foregone legitimate tax savings opportunities and tax deductions, and (g) they were forced to liquidate assets at distressed prices to meet tax obligations.

104. As a proximate cause of the foregoing, the Seippels have been injured in an amount to be proved but believed to be at least $12 million, and should be awarded punitive damages of $100 million.

THIRD CLAIM
(Declaratory Judgment - Against All Defendants)

105. Plaintiffs repeat and reallege each and every prior allegation in Paragraphs 1 through 104, inclusive, as if fully set forth herein.

106. Plaintiffs request that this Court declare the rights and legal relations of Plaintiffs and Defendants. Plaintiffs take the position that Defendants have committed securities fraud, fraud, and have charged unethical excessive and illegal fees. Defendants deny such claims. Thus, a justiciable controversy has arisen over the rights and legal relations of the parties.

107. A dispute exists between the Seippels and the IRS over the amount of interest the Seippels must pay as a result of the additional taxes assessed by the IRS in 1999. The Seippels

may be forced to pay additional interest charges on Virginia as well as federal income taxes, since the Seippels will be obliged to report to the Commonwealth of Virginia any additional federal taxes they pay.

108. The Seippels are also threatened with additional assessments of interest and penalties, as a consequence of the Seippels engaging in the COBRA transactions, as advised by the Defendants, and have paid and will incur additional professional fees to rectify said Defendants' wrongdoing, in the amount exceeding $1 million.

109. Defendants are legally responsible for such interest and/or penalties and/or professional fees incurred by the Seippels on account of Defendants' securities fraud, fraud, and having charged unethical excessive and illegal fees, as set forth above.

110. Pursuant to 28 U.S.C. § 2201, Plaintiffs are entitled to a declaration that Defendants are liable to Plaintiffs for such damages that have been and will be incurred.

FOURTH CLAIM
(Rescission Of Invalid Fee Agreements, Restitution
Or Recoupment Of Unethical, Excessive, Illegal And Unreasonable Fees
And Unjust Enrichment -
Against All Defendants)

111. Plaintiffs repeat and reallege each and every prior allegation in Paragraphs 1 through 110, inclusive, as if fully set forth herein.

112. Irrespective of the merits of the Opinion Letter that Brown & Wood and Ruble rendered to the Seippels, the $21,180 fee that Brown & Wood and Ruble charged the Seippels and which the Seippels paid, is unethically excessive in violation of, and invalid and unenforceable under, Disciplinary Rule 2-106 of the New York Code of Professional

Responsibility and Rule 1.5 of the Virginia Rules of Professional Conduct. On information and belief, Brown & Wood and Ruble charged many other clients the same or higher fees for the same work and expended little, if any, additional time or effort in providing an Opinion Letter and advice to the Seippels.

113. Further, since Brown & Wood and Ruble did not disclose information that they were required to disclose, such as that they were promoting the COBRA tax strategy, that they had a significant pecuniary interest in the COBRA transactions, that there was a significant risk that their role in promoting the COBRA tax strategy would extinguish any attorney-client privilege, and that their representation of the Seippels and their arrangement with the other Defendants violated the applicable rules of professional conduct and standard of care, their fee agreement with the Seippels is not enforceable. The fees Brown & Wood and Ruble collected from the Seippels are unreasonable and the agreement to pay those fees is invalid and unenforceable.

114. Further, the legal services provided by Brown & Wood and Ruble had no value and, as measured by quantum meruit, Brown & Wood and ruble would have earned and collected nothing for the services they provided.

115. Brown & Wood and Ruble have been unjustly enriched by the collection of fees from the Seippels in that they benefited, at Plaintiffs' expense, by collecting fees that were excessive, unreasonable and improper. Equity and good conscience demand the return of those fees.

116. Accordingly, Plaintiffs are entitled to rescind the agreement to pay Brown & Wood and Ruble $21,180 and are entitled to restitution or recoupment of that amount from Brown & Wood and Ruble who must disgorge those fees to the Seippels.

117. Deutsche Bank never disclosed that it and the other Defendants were promoting the COBRA tax strategy, that the fees it would earn were charged on transactions that were structured in a way to provide Deutsche Bank with discretion as to whether a profit would be earned, that Deutsche Bank had a conflict of interest in exercising that discretion and that it would and did exercise that discretion so that a profit was not earned. Irrespective of the services Deutsch Bank rendered, the fees it received were excessive since any chance for profit were controlled by the bank which acted to prevent any profit from being earned.

118. The fees charged by Deutsche Bank were invalid and unreasonable and the Seippels are entitled to rescission of their agreement to pay those fees.

119. Deutsche Bank was unjustly enriched by their receipt of the $600,000 in fees paid by the Seippels in that they benefited, at Plaintiffs' expense, by collecting fees that were excessive, unreasonable and improper. Equity and good conscience demand the return of those fees.

120. Accordingly, Plaintiffs are entitled to rescind the agreement to pay Deutsche Bank $600,000 and are entitled to restitution or recoupment of that amount from Deutsche Bank who must disgorge those fees to the Seippels.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment awarding Plaintiffs:

A. On the First Claim (Securities Fraud), damages in an amount to be proved, but believed to be at least $12 million;

B. On the Second Claim (Fraud), damages in an amount to be proved, but believed to be at least $12 million, plus punitive damages in the amount of $100 million;

C. On the Third Claim (Declaratory Judgment), a declaration that Defendants are liable to Plaintiffs for any and all taxes, interest, and penalties assessed in the past or future against them by the IRS and/or Virginia tax authorities resulting from Plaintiffs' participation in the COBRA scheme, for the money that Plaintiffs lost on the actual COBRA transaction, for all professional fees incurred by Plaintiffs in the past or the future to rectify Defendants' wrongdoing;

D. On the Fourth Claim (Unethical, Excessive and Illegal Fees), disgorgement by Brown & Wood and Ruble to the Seippels of their fees in the amount of $21,180 and disgorgement by Deutsche Bank to the Seippels of its fees in the amount of $600,000;

E. Costs, disbursements, interest; and such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiffs demand trial by jury on all issues so triable.

Dated: New York, New York
December 7, 2004

FENSTERSTOCK & PARTNERS LLP

By: [signature]

Blair C. Fensterstock (BF 2020)
Maureen McGuirl (MM 4910)
Robert L. Lash (RL 0925)

Attorneys for Plaintiffs
30 Wall Street, 9th Floor
New York, New York 10005
(212) 785-4100

CERTIFICATE OF SERVICE

I, Janet Sanchez, hereby certify that on December 7, 2004 I served the within **SECOND AMENDED COMPLAINT,** upon the following persons:

Bruce A. Abbott, Esq.
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

Aaron R. Marcu, Esq.
Covington & Burling
1330 Avenue of the Americas
New York, NY 10019

Stuart E. Abrams, Esq.
Frankel & Abrams
230 Park Avenue - Suite 3330
New York, NY 10169

Seth C. Farber, Esq.
Dewey Ballantine LLP
1301 Avenue of the Americas
New York, NY 10019

by placing the same in a sealed envelope, with first class postage prepaid, and depositing the envelope in a post office or official depository of the United States Postal Service within the State of New York, addressed to the persons as listed above.

Executed this **7th** day of **December 2004** under penalty of perjury under the laws of the United States of America.

JANET SANCHEZ

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THOMAS DENNEY, et al	§	
	§	
PLAINTIFFS,	§	
	§	
v.	§	NO. 03-CV-5460 (SAS)
	§	
	§	
JENKENS & GILCHRIST, et al.	§	
	§	
DEFENDANTS.	§	

ORDER PRELIMINARILY CERTIFYING A SETTLEMENT CLASS PURSUANT TO FED. R. CIV. P. 23(B)(3); PRELIMINARILY APPROVING SETTLEMENT WITH AND ENJOINING CLAIMS AGAINST THE JENKENS & GILCHRIST DEFENDANTS; APPOINTING CLASS REPRESENTATIVES AND CLASS COUNSEL; SETTING HEARING DATE FOR CONSIDERATION OF FINAL SETTLEMENT; AND PROVIDING FOR NOTICE AND CONFIDENTIAL TREATMENT OF CLASS MEMBER IDENTITIES

Before the Court is a joint motion and brief submitted by all named Plaintiffs and by Defendants Jenkens & Gilchrist, a Texas Professional Corporation, Jenkens & Gilchrist, an Illinois Professional Corporation, and Paul M. Daugerdas, and joined by additional Settling Parties Erwin Mayer and Donna Guerin, asking the Court to preliminarily certify a settlement class pursuant to Fed. R. Civ. Pro. 23(a) and (b)(3); preliminarily approve a settlement pursuant to Rule 23(e); appoint class representatives and class counsel; preliminarily enjoin the prosecution of claims against the Settling Defendants[1] and Related Parties[2]; provide for certain discovery as agreed by the Settling Parties;[3] appoint a Special Master to administer the settlement; provide for confidential treatment of Class Member identities; provide for notice to Class Members;[4] and schedule dates for the final hearing regarding settlement approval and related deadlines.

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[1] "Settling Defendants" are (i) those of Jenkens & Gilchrist, Daugerdas, Mayer and Guerin who pay the amounts they are obligated to pay under the Stipulation of Settlement, and (ii) the Carriers, only in their capacities as insurers of the J&G Defendants, who pay the amounts they are obligated to pay under the Stipulation of Settlement. "J&G Defendants refers to Jenkens & Gilchrist and all Persons (including Daugerdas, Mayer and Guerin) who, during all or any part of the period January 1, 1998, to date, held the status of director, officer, stockholder, partner, principal, member, owner and/or employee in any of the entities comprising "Jenkens & Gilchrist" (whether or not any such person has been sued).

[2] "Related Parties" a Person's present or former directors, officers, partners, principals, members, stockholders, owners, employees, agents, servants, attorneys, underwriters, insurers (including, without limitation, the Carriers), subrogees, accountants, auditors, banks or investment bankers, advisors, personal or legal representatives, parent

The United States of America (also referred to herein as the "Government") advised the Court of its intention to seek to intervene for the purpose of objecting to the entry of an order containing any confidentiality provision, either directly or by way of incorporation of or reference to any other agreement, order or document, that would affect the rights of the Government to obtain any information from any person or entity providing or receiving such information pursuant to this Order and/or any other agreement or document incorporated herein, annexed as an exhibit, or annexed to the motion for entry of this Order (hereinafter collectively referred to as the "Order and the Agreements"). The Government asserts that information that may be exchanged (including identities of Class Members) pursuant to the Order and the Agreements is either subject to pre-existing requests for that information or may be subject to

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companies, subsidiaries, divisions, related and affiliated entities, predecessors, successors, joint venturers, heirs, executors, spouses, trusts, trustees, associates, administrators, any entity in which a Person has a controlling interest, any members of their immediate families, and each of their respective representatives, heirs, executors, spouses, trusts, trustees, personal representatives, conservators, administrators, successors, transferees and assigns; provided, however, that in no event shall the term Related Parties include any Non-Settling Defendants or Third Parties or their insurers, or any accounting firm, law firm, or financial institution that was not solely and entirely owned by the Settling Defendants. A "Person" is a natural person or entity.

[3] "Settling Parties" are the J&G Defendants and the plaintiffs in this case and in two other cases, all as more fully stated in the Stipulation of Settlement.

[4] The "Class" and "Class Members" mean all Persons who, from January 1, 1999, through December 31, 2003, inclusive, either (1) consulted with, relied upon, or received oral or written opinions or advice from Jenkens & Gilchrist or any Jenkens & Gilchrist attorney concerning any one or more of the Tax Strategies and who in whole or in part implemented, directly or indirectly, any one or more of the Tax Strategies or (2) filed with a Person described in (1) a joint tax return for the year(s) in which such Tax Strategy was implemented, and (3) the legal representatives, heirs, successors, and assigns of all Persons described in (1) and (2). The "Class" includes, without limitation, the individuals, partnerships, limited liability companies, trusts, corporations and other legal entities that Jenkens & Gilchrist or any Jenkens & Gilchrist attorney advised concerning, that were formed in connection with, or that engaged or were utilized in any one or more of the Tax Strategies. The "Class" excludes, however, any Persons described in (1), (2) and (3) who have released all claims against the J&G Defendants.

further requests for that information from the Government. Nothing in this Order and the Agreements prohibits the Government in any way from obtaining that information. The Government takes no position and expresses no views on the merits of the settlement or the representations of fact in the Order and the Agreements.

The Court is aware of other litigation against the J&G Defendants[5] by Class Members, and will address the rights of those litigants in this Order.

For the reasons and to the extent stated herein, the Court grants the jointly requested relief.

Background Facts

The proposed settlement would resolve the proposed class's claims against the J&G Defendants for damages arising out of what the plaintiffs allege was substantially the same tax advice given to hundreds of class members. The settlement would resolve the claims asserted in the above-referenced action (the "*Denney* suit"), as well as in the following two other actions based on the same alleged acts and omissions:

- *Henry N. Camferdam, Jr., et al. on their own behalf and on behalf of all others similarly situated v. Ernst & Young International, Inc., et al.*, Case No. 02-CV-10100, in the United States District Court, Southern District of New York ("the *Camferdam* Suit).
- *Jack Riggs et al. v. Jenkens & Gilchrist, et al.*, Case No. 03-6291-C, in County Court at Law No. 3, Dallas County, Texas ("the *Riggs* Suit").

(The *Denney*, *Camferdam* and *Riggs* Suits will be collectively referred to as "the Litigation.")[6]

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[5] "J&G Defendants" refers to Jenkens & Gilchrist and all Persons (including Daugerdas, Mayer and Guerin) who, during all or any part of the period January 1, 1998, to date, held the status of director, officer, stockholder, partner, principal, member, owner and/or employee in any of the entities comprising Jenkens & Gilchrist (whether or not any such Person has been sued).

[6] The *Denney* and *Camferdam* suits are both alleged class actions. *Riggs* is not.

Commencing in 1999, the J&G Defendants advised taxpayers regarding "Tax Strategies" that the IRS now challenges. The class of more than 1,100 taxpayers (and their related entities and jointly-filing spouses) is more particularly defined below. The proposed settlement covers all such persons.[7]

Plaintiffs allege that the J&G Defendants are liable for violating the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961, *et seq.*), civil conspiracy, breach of fiduciary duty, fraud, breach of contract, breach of the duty of good faith and fair dealing, negligent misrepresentation, professional malpractice, declaratory judgment, unjust enrichment and the charging of unethical, excessive and illegal fees. Plaintiffs seek, on behalf of themselves and a proposed plaintiff class of former Jenkens & Gilchrist clients who received the advice described above, actual damages totaling hundreds of millions of dollars, as well as punitive damages. The J&G Defendants deny all allegations of wrongdoing and assert that they are not liable to any of the class members, that their tax advice was reasonable, that each class member knew that the IRS could challenge the Tax Strategies and that the outcome could not be and was not guaranteed.

The named plaintiffs in the Litigation, on behalf of themselves and the proposed class; the J&G Defendants; and the insurance carriers for the J&G Defendants have reached a settlement subject to Court approval. The settlement was achieved through a protracted mediation conducted by retired federal judge Robert Parker over three sessions and numerous conference calls. The details of the settlement are set forth in a Stipulation of Settlement dated

[7] The term "Tax Strategies" is defined as those tax-reducing strategies that are the basis of the *Denney*, *Camferdam* and *Riggs* suits, as well as all other tax-reducing strategies advised upon, opined about, designed or recommended by any of the J&G Defendants involving (a) basis-enhancing investment transactions, (b) basis-enhancing derivatives structures, (c) basis leveraged investment swap spreads, (d) hedge option monetization of economic remainders, (e) basis adjustment remainder trusts, (f) gain option partnerships, or (g) other basis-enhancing, basis-preserving, and / or gain-avoidance transactions utilizing options and / or indebtedness and involving corporations and / or partnerships.

April 28, 2004 and the exhibits attached thereto (the "Stipulation"), which are available for viewing or copying at the Office of the District Clerk in the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007-1312.

Having reviewed and considered the Stipulation, the joint motion for preliminary approval of the settlement and the supporting brief, all relevant pleadings, and the arguments of counsel, the Court makes the findings and grants the relief set forth below.

NOW, THEREFORE, IT IS HEREBY ORDERED:

Class Certification for Settlement Purposes

1. The Court finds, for purposes of the Stipulation and the Settlement only, that the prerequisites to a class action under Fed.R.Civ.P. 23(a) and (b)(3) have been satisfied. The Court specifically finds:

(a) The number of Class Members is so numerous that joinder of all of them is impracticable.

(b) There are questions of law and fact common to the Class. The claims of all Class Members challenge the same course of conduct.

(c) The claims of the Representative Plaintiffs (appointed below) are typical of the claims of the Class. Like the unnamed class members, the Representative Plaintiffs all received similar advice, based on such advice, claimed tax benefits, and are now exposed to IRS claims for taxes, interest and penalties.

(d) The Representative Plaintiffs will fairly and adequately represent the interests of the Class. There are no conflicts of interest between the Representative Plaintiffs and the Class. The Representative Plaintiffs have expressed and exhibited a willingness to serve as class representatives and, through Class Counsel, have exhaustively investigated this matter and aggressively pursued a fair settlement for the Class. Class Counsel (appointed below) are experienced in class actions and complex commercial litigation.

(e) Questions of law and fact common to the Members of the Class predominate over any questions affecting only individual members of the Class. The following common questions, among others, predominate and will govern the outcome of the Class claims: (1) Was the legal advice correct? (2) If not, was the legal advice negligent? (3) If so, did the legal advice cause harm in the form of (a) exposure to tax penalties measured by a percentage of the understated tax, interest, and (b) fees paid to obtain and defend this tax advice?

(f) A class action is superior to other available methods for the fair and efficient adjudication of the controversy. There are more than 1100 Class Members residing in 41 states. Given the J&G Defendants' limited resources, resolution by individual lawsuits would be unrealistic and, more importantly, unfair to the claimants. Jenkens & Gilchrist's insurance carriers asserted coverage defenses, and policy limits are eroded by defense costs. If the claims against the J&G Defendants have merit and fall within Jenkens & Gilchrist's insurance coverage (both of which are uncertain), the defense costs, individual settlements, and adverse judgments incurred in multiple actions in multiple jurisdictions would quickly deplete available resources, permitting recovery only by those first few class members in line. Even prior to verdict, the pressure of multiple individual cases could cause Jenkens & Gilchrist lawyers to seek other opportunities and lead to the collapse of the firm. Multiple lawsuits would be an inefficient use of the limited resources of the parties and the judicial system and could lead to inconsistent decisions. Resolution of the claims against the J&G Defendants by class action settlement would avoid these substantial dangers.

2. Pursuant to Fed.R.Civ.P. 23, and for purposes of the Stipulation and the Settlement only, the Court hereby certifies a plaintiffs' settlement class defined as follows:

> All Persons who, from January 1, 1999, through December 31, 2003, inclusive, either (1) consulted with, relied upon, or received oral or written opinions or advice from Jenkens & Gilchrist or any Jenkens & Gilchrist attorney concerning any one or more of the Tax Strategies and who in whole or in part implemented, directly or indirectly, any one or more of the Tax Strategies or (2) filed with a Person described in (1) a joint tax return for the year(s) in which such Tax Strategy was implemented, and (3) the legal representatives, heirs, successors, and assigns of all Persons described in (1) and (2). The "Class" includes, without limitation, the individuals, partnerships, limited liability companies, trusts, corporations and other legal entities that Jenkens & Gilchrist or any Jenkens & Gilchrist attorney advised concerning, that were formed in connection with, or that engaged or were utilized in any one or more of the Tax Strategies. The "Class" excludes, however, any Persons described in (1), (2) and (3) who have released all Released Claims against the J&G Defendants.

As agreed in the Stipulation of Settlement, if for any reason (including any party's exercise of a valid right to terminate under the Stipulation) the Court declines to grant final approval of the Settlement, then the certification of the Class shall become null and void without further Court action.

Appointment of Class Representatives

3. Pursuant to Fed.R.Civ.P. 23, and for purposes of the Stipulation and the Settlement only, the following persons, the "Representative Plaintiffs," are certified as Class Representatives: Thomas Denney, R. Thomas Weeks, Norman R. Kirisits and Kathryn M. Kirisits, TD Cody Investments, LLC, RTW High Investments, LLC, NRK Syracuse Investments, LLC, DKW Partners, DKW Lockport Investors, Inc., Donald A. DeStefano and Patricia J. DeStefano, DD Tiffany Circle Investments, LLC, Tiffany Circle Partners, Diamond Roofing Company, Inc., Jeff Blumin, JB Hilltop Investments, LLC, Kyle Blumin, KB Hoag Lane Investments, LLC, Michael Blumin, MB St. Andrews Investments, LLC, Fayetteville Partners, Laurel Hollow Investors, Inc., Henry N. Camferdam, Jr. Jeffrey M. Adams, Jay Michener, Carol Trigilio, BAMC, Inc., Carmel Partners, HNC Ditch Investments, LLC, JMA Sedgemour

Investments, LLC, JM Walnut Investments, LLC, CT Oak Tree Investments, LLC, Jack Riggs, Dot Com Investments, L.L.C., Sixth Street Partners, and Technology Capital Corporation .

Appointment of Class Counsel

4. For purposes of the Stipulation and the Settlement only, the following attorneys are appointed Class Counsel:

Lead Class Counsel:

David R. Deary
David.Deary@Shore-Deary.com
W. Ralph Canada, Jr.
Ralph.Canada@Shore-Deary.com
Stewart Clancy
Stewart.Clancy@Shore-Deary.com
Jeven R. Sloan
Jeven.Sloan@Shore-Deary.com
SHORE DEARY, L.L.P.
Chateau Plaza, Suite 1565
2515 McKinney Avenue
Dallas, Texas 75201
(800) 497-6444 (toll free)
(214) 360-9622
(214) 739-3879(fax)

Joe R. Whatley, Jr.
JWhatley@WhatleyDrake.com
Othni Lathram
OLathram@WhatleyDrake.com
WHATLEY DRAKE, LLC
2323 2nd Avenue North
Birmingham, Alabama 35203
(877) 395-3238 (toll free)
(205) 328-9576
(205) 328-9669 (fax)

Jeffrey H. Daichman
KANE & KESSLER, P.C
1350 Avenue of the Americas
New York, New York 10019-4896
(212) 541-6222
(212) 245-3009 (fax)

Ernest Cory
ecory@cwcd.com
Jerome Tapley
jtapley@cwcd.com
Craig Niedenthal
cniedenthal@cwcd.com
CORY WATSON CROWDER & DEGARIS
2131 Magnolia Avenue
Birmingham, Alabama 35205
(205) 328-2200
(205) 324-7896(fax)

Other Class Counsel:

Stephen F. Malouf
The Law Offices of Stephen F. Malouf, P.C.
3506 Cedar Springs
Dallas, Texas 75219

214 969 7373
214 969 7648 (fax)

Preliminary Approval of the Settlement

5. Subject to all provisions of this Order, the Court preliminarily approves the settlement memorialized in the Stipulation as being fair, just, reasonable and adequate for purposes of Rule 23 of the Federal Rules of Civil Procedure, subject to further consideration and confirmation following the hearing provided for below. The Court preliminarily finds that the proposed settlement is fair, adequate and reasonable after taking into account the fact that liability will be hotly contested, that litigation is always uncertain and that delays are the norm, and the following factors, among others:

(a) the existence and merits of the insurance coverage litigation, the resulting uncertainties regarding coverage, and the effect on Class Members' claims of a loss of coverage;

(b) the fact that the insurance policy is "wasting," in that the cost of defending, settling, and paying judgments in individual cases reduces the amount available for later cases;

(c) the financial condition of Jenkens & Gilchrist and the competitive pressures it faces;

(d) the pressure of individual suits on Jenkens & Gilchrist, and whether, absent a settlement now, Jenkens & Gilchrist may lose lawyers and be forced into bankruptcy, where the unsecured claims of the Class will have substantially diminished value;

(e) the effect of a Jenkens & Gilchrist bankruptcy on the Carriers who, not having settled, will not be concerned about causing Jenkens & Gilchrist to collapse and will instead focus squarely on coverage defenses;

(f) the potentially large recoveries in individual cases, and the effects of large recoveries on the claims of Class Members whose cases are not first in line;

(g) the fact that the individual J&G Defendants claim a contractual right of indemnity from Jenkens & Gilchrist;

(h) the opinions regarding this settlement of the named Plaintiffs and other Class Members represented by Plaintiffs' counsel;

(i) the J&G Defendants' assertions that

- a number of other law and accounting firms issued similar opinions;
- the J&G Defendants' opinions were not guarantees, but instead stated that their conclusions were "more likely than not"; and
- no Class Members complained of fees prior to being audited by the IRS;

(j) the J&G Defendants' assertions that Class Members (a) are wealthy and sophisticated, (b) wanted to reduce or eliminate significant tax obligations, (c) were fully informed of and willing to assume the risk, and (d) are likely to be assigned substantial fault by any jury.

Schedule of Settlement Hearing

6. A hearing (the "Settlement Hearing") shall be held before this Court on a date to be stated in the Notice upon further direction from the Court. The hearing shall be held in Courtroom 15C of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007-1312 to determine whether the proposed Settlement, on the terms and conditions set forth in the Stipulation, is fair, reasonable and adequate and should be approved by the Court; whether a Judgment as provided in the Stipulation should be entered herein; and to determine the amount of attorneys' fees and expenses that should be awarded to Class Counsel. The Court may adjourn the Settlement Hearing without further notice to members of the Class.

Manner and Content of Notice and Class Members' Right to Opt-Out or Object to the Settlement

7. The Court approves as to form and content the Notice of Settlement of Class Action with the J&G Defendants (the "Notice"), the Proof of Claim and Release template, and the Summary Notice annexed hereto as Exhibits A-1, A-2 and A-3, respectively.

8. The Court finds that the mailing and distribution of the Notice and publication of the Summary Notice substantially in the manner set forth herein meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, is the best notice practicable, and shall constitute due and sufficient notice to all persons entitled thereto.

9. The notice procedure as well as the processing of claims shall be administered as more fully set forth below:

(a) Not later than thirty (30) days after the entry of this Order (the "Notice Date"), Jenkens & Gilchrist shall cause a copy of the Notice annexed as Exhibit A-1 to be mailed by first class mail to all Class Members who can be identified with reasonable effort;

(b) Not later than thirty (30) days after the Notice Date, Class Counsel shall cause the Summary Notice, substantially in the form annexed as Exhibit A-3, to be published once in the national edition of The Wall Street Journal; and

(c) Not later than 60 days after the Notice Date, Jenkens & Gilchrist and Class Counsel shall file with the Court proof, by affidavit or declaration, of such mailing and publishing. The affidavit or declaration by Jenkens & Gilchrist shall omit Class Member identities in conformity with the confidentiality provisions herein.[8]

[8] Notwithstanding any provision of this Order and the Agreements, nothing in this Order and the Agreements shall prejudice any right of the Government to obtain information from or relating to Class Members or the Settling Defendants. No reference to confidentiality in this Order and the Agreements shall affect any right claimed by the Government to obtain information from any person or entity.

10. Any Member of the Class who desires to request exclusion from the Class shall do so within the time set forth and in the manner described in the Notice, which shall be within 90 days after the Notice Date. Unless the Court orders otherwise, no request for exclusion shall be valid unless it is made within the time set forth and in the manner described in the Notice. For 60 days following the end of the period for requesting exclusion from the Class, any person who has opted out of the class by requesting exclusion may retract his request for exclusion.

11. All Members of the Class who do not request exclusion shall be bound by any and all judgments, orders or settlements entered or approved by the Court.

12. Class Members who do not elect to be excluded from the Class and wish to participate in the Settlement shall complete and submit a Proof of Claim and Release form by a date to be designated by the Court and communicated to the Class in a future notice. Class Members must timely submit the Proof of Claim and Release form to the Special Master on a form that will be provided to them. Such form shall conform to the template of Exhibit A-2 hereto, but may contain such additional questions and requests for information as the Court and Special Master may deem relevant to claims administration and the Plan of Allocation. Any Class Member who does not submit a properly-completed Proof of Claim and Release form within the time designated by the Court shall be barred from sharing in the distribution of the proceeds of the Settlement Fund, unless otherwise ordered by the Court, but shall in all other respects be bound by any final judgment entered.

13. Any Member of the Class may enter an appearance in the *Denney* Suit at his, her or its own expense, individually or through counsel of his own choice.

14. Any Member of the Class may appear and show cause why the Settlement should or should not be approved as fair, reasonable and adequate, why a judgment should or should not be entered thereon, or why attorneys' fees and expenses should or should not be awarded to Class

Counsel; provided, however, that no Class Member shall be heard on such issues unless not later than twenty-one (21) days before the Settlement Hearing, that person (1) serves by hand, fax or email written notice of his, her or its intention to appear (including each objection and the basis therefor), together with copies of any papers and briefs, upon Class Counsel and the below-listed counsel for the J&G Defendants, and (2) files said objections, papers and briefs with the Clerk of the United States District Court for the Southern District of New York. Any Member of the Class who does not make his, her or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement as memorialized in the Stipulation, and the award of attorneys' fees and expenses to Class Counsel, unless otherwise ordered by the Court.

15. Any Class Member desiring to request exclusion, appear, object or otherwise be heard while maintaining the confidentiality, if any, of his, her or its identity as a participant in a Tax Strategy transaction may do so by using the Confidential identification number assigned to the Class Member pursuant to ¶24 herein. Use of such confidential identification number does not in any way prohibit the Government from obtaining the identity of such class member.

Appointment of Special Master

16. Subject to replacement by the Court if necessary, the Court hereby appoints the below-named person(s) as Special Master(s) for the purpose of determining an equitable plan of allocation, then administering the Settlement upon final approval.

> Philip Lacovara and Michael Young of Judicial Arbitration and Mediation Services in New York.

The Special Master is authorized and directed to receive, hold and invest settlement funds; receive proofs of claim; communicate with Class Members regarding their claims and settlement-related matters; adjudicate claims; devise and recommend to the Court a fair and equitable plan of allocation; administer the claims process; review and preliminarily determine claims for attorneys' fees and expenses and administrative expenses (other than the Special Master's own fees); pay Class Counsel fees as determined by the Court and administrative expenses as approved by the Court; disburse the Settlement funds to qualified claimants; and perform such other functions as may be necessary to effectuate and finalize the Settlement, all pursuant to the oversight, review and confirmation of this Court. All funds held by the Special Master shall be deemed in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the court, until such time as such funds are distributed pursuant to the Stipulation and/or further order(s) of the Court.

17. The Special Master shall devise, for the Court's review and approval, a plan of allocation that will fairly and equitably distribute the Settlement proceeds among qualified Class Members. In arriving at a proposed Plan of Allocation, the Special Master may take into account the following factors (in no particular order), among others:

- whether the Class Member is under Internal Revenue Service audit or has been assessed a deficiency regarding use of a Tax Strategy, or has paid or agreed to pay additional tax, interest, or penalties regarding use of a Tax Strategy;
- whether the Class Member is under audit by, has paid, or has agreed or been required to pay additional tax, interest or penalties by any state income taxing authority based upon use of a Tax Strategy;
- the size of the Tax Strategy in which the Class Member engaged;
- fees paid to Jenkens & Gilchrist by the Class Member;
- expenses incurred by the Class Member in defending claims asserted by the IRS or state income taxing authority based upon use of a Tax Strategy;
- any opportunity costs incurred by Class Members who can establish that they used a Tax Strategy instead of a specific alternative means of lawfully reducing taxes;
- the dates on which the Class Member (a) received a Jenkens & Gilchrist tax opinion addressing a Tax Strategy, (b) filed a tax return reporting the results of a

Tax Strategy, (c) received an audit notice, (d) received a deficiency assessment, and (e) agreed to pay or paid taxes, interest, or penalties relating to a Tax Strategy; and

- whether the Class Member's claims may be barred by limitations, in whole or in part.

18. Subject to further order of this or any other court, the Special Master shall administer and finalize the Settlement (in the event of final Settlement approval) in such a way as to preserve Class Member confidentiality. All written and electronic materials received or generated by the Special Master or the Court containing Class Member identities or information from which class member identities can reasonably be determined shall be unavailable for public inspection or copying by any person or entity, except that nothing in this Order and the Agreements shall prejudice any right of the Government to obtain the identities of the class members.

19. Upon completion of the Special Master's duties, the Special Master shall file with the Clerk of the Court, under seal, a final report listing all Settlement Class Members, their Confidential identification numbers, which Settlement Class Members filed Proofs of Claim, the disposition of each Claim (whether allowed, disallowed or otherwise adjudicated), the dates and amounts of all payments made to each Claimant, a final reconciliation of all Settlement Funds (including earnings thereon) received and disbursed by the Special Master, and any other matter the Special Master deems necessary to a full understanding of the administration of this Settlement. Nothing in this Order and the Agreements shall prejudice any right of the Government to obtain a copy of the final report.

20. The Special Master shall maintain for a period of seven years following the filing of the Final Report all documents and records received or generated by him or her in the course of discharging his or her duties herein. Upon the expiration of that seven year period, the Special

Master shall destroy all such documents and records in his possession and certify the destruction in a certificate filed with the Court and served on Lead Counsel and counsel for Jenkens & Gilchrist herein.

Confidential Treatment of Class Member Identities

21. To the greatest extent permitted by law, the class certification process and the approval and administration of the Settlement shall be conducted in such a way as to assure the continued confidentiality of unnamed Class Members' identities, except as to the Government. Nothing in this Order and the Agreements affects any right of the Government to obtain your identity; the Government's right to discover your identity is being enforced before United States District Judge James Moran in the Northern District of Illinois, Eastern Division.[9]

22. Unless required to do so by court order, law, regulation, subpoena, summons, other legal compulsion, or reasonable interpretation thereof, no party may disclose in any filing or in open court either Class Member identities or personal or other information from which Class Member identities can be determined. Notwithstanding the foregoing sentence, no person or entity's ability to voluntarily provide information to the Government shall be precluded or restricted in any way.

23. All notices sent to Class Members before the Effective Date shall be mailed by Jenkens & Gilchrist. Jenkens & Gilchrist shall keep a full and accurate record of the particulars of such mailings. All notices sent to Class Members after the Effective Date shall be mailed by the Special Master.

24. Jenkens & Gilchrist shall assign each Class Member a confidential identification number (*e.g.*, John Doe 1, John Doe 2, etc.) for the Class Member's use in seeking exclusion

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[9] On April 20, 2004, Judge Moran entered an order finding that "the identity of the Clients is not subject to the attorney-client privilege." *United States v. Jenkens & Gilchrist*, 2004 WL 870824 (N.D.Ill. April 20, 2004)., Judge Moran has ordered Jenkens & Gilchrist to produce such identities on May 17, 2004.

from the Class, objecting to the settlement, filing a proof of claim and otherwise participating in the Settlement proceedings. Nothing in this Order and the Agreements shall prejudice any right of the Government to obtain from any person or entity a key to the identities of the Class Members and the confidential identification number assigned by Jenkens & Gilchrist.

25. The Notice mailed to each Class Member (Exhibit A-1 hereto) shall advise the Class Member (i) of the confidential identification number assigned to him, her or it; (ii) that the proposed settlement will be administered in such a way as to preserve the confidentiality of his, her or its identity as a participant in one or more of the Tax Strategies, to the extent permitted by law except that nothing in this Order and the Agreements shall prejudice any right of the Government to obtain the identities of the Class Members from any person or entity; and (iii) that the Class Member may use his, her or its assigned confidential identification number in submitting a proof of claim, objecting to the Settlement, requesting exclusion from the Class or otherwise participating in the Settlement approval process.

26. If the need arises for the identity of a specific Class Member to be disclosed to the Court, such disclosure shall be *in camera* to the Court only and, if in writing, the Court shall place the disclosure under seal unless the Court determines that such Class Member's identity is no longer confidential.

27. As soon as practicable after the Effective Date, Jenkens & Gilchrist shall provide the Special Master the names, addresses and Confidential identification numbers of all Settlement Class Members. Because the Special Master is an arm of the Court, disclosure of Class Member identities to the Special Master shall not waive any claim of confidentiality with respect to such identities, but rather shall be considered an *in camera* disclosure to the Court, albeit without affecting the Government's right to know Class Member identities. The Special Master shall maintain the identity of all Class Members in confidence and shall not, unless required to do so

by court order, legal compulsion, subpoena, summons, applicable law, or reasonable interpretation thereof disclose such identities to any person other than to the Court *in camera,* and then only if such disclosure is reasonably necessary for the Court to address a specific issue. All written and electronic materials received or generated by the Special Master containing Class Member identities or information from which one could determine Class Member identities shall be considered unavailable for inspection and copying, and subject to the confidentiality and protective order provisions contained herein and in any subsequent orders by the Court except that nothing in this Order and the Agreements shall prejudice any right of the Government to obtain the identities of the Class Members from any person or entity, including the Special Master. Insofar as legally permissible, in reporting interest on or the distribution of funds pursuant to the Stipulation or applicable law, the Special Master shall not disclose Class Member identities, other than to the Government, if and as required. The Special Master shall make the filings and elections required by the Stipulation and applicable federal law in a manner that will protect the confidentiality of Class Member identities to the greatest extent permitted by law.

28. The Special Master shall promptly report to the Court and all Parties to this Settlement the receipt of any discovery device, subpoena or other legal compulsion requesting information or materials that would reveal Class Member identities.

29. These procedures regarding the confidentiality of Class Member identities do not apply to the Representative Plaintiffs, whose identities as former Jenkens & Gilchrist clients in connection with one or more of the Tax Strategies are already a matter of public record.

Preliminary Injunction Against Prosecution of Claims Against the J&G Defendants

30. The Court finds that a preliminary anti-suit injunction is necessary to protect its jurisdiction. Unless enjoined, Class Members' prosecution of Tax-Strategy-related claims

against the J&G Defendants would substantially interfere with the Court's jurisdiction to consider the proposed Settlement and render a meaningful decision

31. If the J&G Defendants are required to defend multiple lawsuits in multiple courts, the proposed Settlement will likely collapse before the final hearing on the proposed Settlement. The number of former Jenkens & Gilchrist clients under audit will almost certainly grow and, absent an injunction, more Class Members will sue the J&G Defendants. Class Members have already filed five cases against the J&G Defendants and Jenkens & Gilchrist has signed terminable-at-will tolling agreements with another 48 Class Members. Jenkens & Gilchrist's defense costs for continued litigation could overwhelm the firm. To obtain its insurers' agreement to fund a large part of the Settlement, despite coverage disputes, Jenkens & Gilchrist agreed to bear its own cost of defense pending the Court's final Settlement approval. Costs, however, are not the only factor. The adverse publicity that invariably attends such litigation would put enormous pressure on any professional services firm, whose core assets are highly mobile professionals. In this case, the specter of large, possibly uninsured damage awards increases the pressure even more.

32. Recognizing that it would be difficult to actively defend against multiple suits while at the same time trying to effectuate a class action settlement, Jenkens & Gilchrist specifically bargained for the right to terminate the Settlement if the Court does not preliminarily enjoin other litigation. The Court expects that if an injunction were not granted, Jenkens & Gilchrist would exercise that right in order to end litigation expense by calling on its carriers to resume the defense.

33. A preliminary injunction, expected to last six to nine months, will not impose substantial hardship on Class Members. No pending case is anywhere near trial. No depositions have been taken in any case, and the J&G Defendants have not produced documents in any case.

It is unlikely that any Class Member can recover anything in an individual action prior to the final hearing on this Settlement. As a practical matter, the J&G Defendants cannot settle individual claims while this application is pending. The J&G Defendants have agreed to defend such claims with their own funds and without any insurance money. Any such settlement with a Class Member, moreover, must be disclosed; such a settlement would be considered in determining whether this Settlement is fair and, therefore, even if the J&G Defendants could afford to settle with a Class Member, any payment would surely be less than the Class Member would receive in this Settlement.

34. A preliminary injunction will also conserve judicial and party resources while the request for approval of this claim-dispositive Settlement is decided. If individual cases are allowed to go forward and the Settlement is finally approved, the cost of prosecuting and defending individual actions in the interim will have been wasted.

35. Accordingly, pending final determination of whether the Settlement should be approved, the Court preliminarily enjoins all Class Members from directly or indirectly, representatively, derivatively, or in any other capacity, commencing or prosecuting any action or proceeding in this Court or in any other court or tribunal against the J&G Defendants, their insurance carriers or any of their Related Parties arising out of or based upon the Tax Strategies. This injunction does not, however, preclude the commencement or continued prosecution of any action or proceeding in this Court or in any other court or tribunal against any firms, including accounting firms, law firms or financial institutions that were not solely and wholly owned by the J&G Defendants, such as Sidley Austin Brown & Wood, R.J. Ruble, BDO Seidman, KPMG, Ernst & Young, Deutsche Bank and Wachovia Corporation by way of example.

36. The statute of limitations (and any other defenses based on the passage of time including but not limited to statute of repose or laches) with respect to any claim any Class

Member(s) may now have or in the future may have against the J&G Defendants, their insurance carriers or any of their Related Parties arising out of or based upon the Tax Strategies, is hereby tolled beginning on the date this Order is entered and continuing during the entire period this injunction is in effect.

Miscellaneous Provisions

37. Notwithstanding any other provision of this Order or any confidentiality term in this Order, in any attachment to this Order, or in any agreement to which this Order refers:

a) Pending Class Member Cases. To reduce any prejudice to Class Members in pending cases, and for the purpose of evaluating the fairness of this Settlement, counsel of record ("Interested Counsel") for Class Members in Tax-Strategy-related cases pending as of 2 p.m. on May 10, 2004 against the J&G Defendants (the "Pending Cases")[10] may file an appearance in this action and (1) shall obtain from Class Counsel, subject to the same confidentiality obligations as apply to Class Counsel, all information obtained from the J&G Defendants that relates (i) the financial fairness of the settlement as to clients represented by Interested Counsel,[11] (ii) other fairness aspects of the settlement as to clients represented by Interested Counsel in the Pending Cases, or (iii) claims of clients represented by Interested Counsel in the Pending Cases, (2) shall obtain from Class Counsel a list of Non-Settling Defendants and Third Parties (as those terms are defined in the Stipulation of Settlement) as to whom the J&G Defendants have provided or provide non client-specific documents,

[10] The "Pending Cases" are the *Seippel* case in this Court, the *Martin* case in Harris County, Texas, and the *Carper* case in Travis County, Texas.

[11] Before obtaining any information, Interested Counsel shall provide Class Counsel and counsel for the J&G Defendants the names of the clients they represent, the name of the tax strategy the client employed, and the names of other persons involved in their tax strategy (such as any other law firms, the accounting firm or financial institution involved).

(3) may ask Class Counsel and counsel for the J&G Defendants for additional information relating to the fairness of the settlement, then appear before this Court to seek such information if it is not provided. This order does not prevent Interested Counsel or the Settling Parties from asking the Court, informally but with notice and fair opportunity to be heard, to modify or dissolve this preliminary injunction.

b) The Government. No provision relating to confidentiality in this Order and the Agreements shall bar, or in any way diminish any right of the United States of America (the "Government"), to obtain any document (as defined by Local Civil Rule 26.3 of the United States District Court for the Southern District of New York and Rule 34 of the Fed. R. Civ. P.)("Document"), item, statement (including, but not limited to, any statement made during an interview, deposition, and/or meeting, and/or any written or electronically transmitted statements) or other evidence (hereinafter collectively referred to as "Information") through any judicial, administrative or other investigative process or voluntary production, or diminish the rights of any person or entity to produce any Information to the Government, or subject any person or entity to liability to the parties for a violation of this order due to his, her or its compliance with a request of the Government for information. This provision supersedes any and all statements relating to confidentiality contained in this Order and the Agreements. No person or entity, including but not limited to the parties to this litigation and their partners, agents and employees, may rely on any confidentiality provision in this Order and the Agreements to prevent the Government from having full access to any and all Information exchanged in this case and/or pursuant to this Order and Agreements, nor shall any person's or entity's ability to provide information to the Government be precluded or restricted in any way by this

Order and the Agreements. Nothing in this Order and the Agreements renders anything that otherwise is a waiver, not a waiver. Nothing in the Order and Agreements relating to the admissibility of evidence shall be binding on the Government or any court or administrative agency.

38. At the Settlement Hearing, the Court will also consider (i) Class Counsel's application for attorneys' fees and reimbursement of costs and expenses and (ii) the parties' applications for reimbursement of costs and expenses incurred in ascertaining Class Member addresses, mailing Notice to Class Members, and publishing the Summary Notice. Applications for fees and expenses shall be filed and served at least seven (7) days before the Settlement Hearing.

39. The Court reserves the right to continue the date of the Settlement Hearing and adjourn the Settlement Hearing without further notice to Class Members, except that notice will be provided to Interested Counsel who have appeared in this action. The Court also retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the settling parties, if appropriate, without further notice to the Class, other than Interested Counsel who have appeared.

40. The Government shall file any motion to intervene by May 28, 2004. Any response shall be filed by June 8, 2004, and the Government's reply shall be filed by June 29, 2004. Notwithstanding any other provisions of this Order, all deadlines in this Order shall be extended by the number of days between the date of this Order and the date of the Court's ruling on the Government's motion now set to be filed on May 28, 2004. If no such motion is filed on May 28, all deadlines in this Order run from May 28. As soon as possible in these circumstances, the Settling Parties shall submit an order, first for approval by Interested Counsel, restating all deadlines in the Order.

41. A reasonable time but not less than 10 days prior to presenting to the Court (a) any order addressing confidentiality, privilege, or admissibility of evidence or (b) any form of final judgment or other order, the settling parties shall provide a copy of it to the Government.

DATED: May 14, 2004.

HON. SHIRA A. SCHEINDLIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A-1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THOMAS DENNEY, R. THOMAS WEEKS, NORMAN R. KIRISITS, KATHRYN M. KIRISITS, TD CODY INVESTMENTS, L.L.C., RTW HIGH INVESTMENTS, L.L.C., NRK SYRACUSE INVESTMENTS, L.L.C., DKW PARTNERS, DKW LOCKPORT INVESTORS, INC., DONALD A. DESTEFANO, PATRICIA J. DESTEFANO, DD TIFFANY CIRCLE INVESTMENTS, L.L.C., TIFFANY CIRCLE PARTNERS, DIAMOND ROOFING COMPANY, INC., JEFF BLUMIN, JB HILLTOP INVESTMENTS, LLC, KYLE BLUMIN, KB HOAG LANE INVESTMENTS, LLC, MICHAEL BLUMIN, MB ST. ANDREWS INVESTMENTS, LLC, FAYETTEVILLE PARTNERS, AND LAUREL HOLLOW INVESTORS, INC., on their own behalf and on behalf of all others similarly situated,	§	NO. 03-CV-5460 (SAS)
PLAINTIFFS,	§	
v.	§	
JENKENS & GILCHRIST, A TEXAS PROFESSIONAL CORPORATION, JENKENS & GILCHRIST, AN ILLINOIS PROFESSIONAL CORPORATION, BDO SEIDMAN, L.L.P., PASQUALE & BOWERS, L.L.P., CANTLEY & SEDACCA, L.L.P., DERMODY, BURKE, AND BROWN, CERTIFIED PUBLIC ACCOUNTANTS, PLLC, PAUL M. DAUGERDAS, PAUL SHANBROM, EDWARD SEDACCA, DEUTSCHE BANK AG, and DEUTSCHE BANK SECURITIES, INC., D/B/A DEUTSCHE BANK ALEX BROWN, a DIVISION of DEUTSCHE BANK SECURITIES, INC.	§	
DEFENDANTS.	§	

NOTICE OF SETTLEMENT OF CLASS ACTION
CLAIMS AGAINST JENKENS & GILCHRIST AND ITS SHAREHOLDERS

TO: ALL PERSONS WHO, FROM JANUARY 1, 1999, THROUGH DECEMBER 31, 2003, INCLUSIVE, EITHER (1) CONSULTED WITH, RELIED UPON, OR RECEIVED ORAL OR WRITTEN OPINIONS OR ADVICE FROM JENKENS & GILCHRIST[1] OR ANY JENKENS & GILCHRIST ATTORNEY CONCERNING ANY ONE OR MORE OF THE TAX STRATEGIES[2] AND WHO IN WHOLE OR IN PART IMPLEMENTED, DIRECTLY OR INDIRECTLY, ANY ONE OR MORE OF THE TAX STRATEGIES OR (2) FILED WITH A PERSON DESCRIBED IN (1) A JOINT TAX RETURN FOR THE YEAR(S) IN WHICH SUCH TAX STRATEGY WAS IMPLEMENTED, AND (3) THE LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS, AND ASSIGNS OF ALL PERSONS DESCRIBED IN (1) AND (2). THE "CLASS" INCLUDES, WITHOUT LIMITATION, THE INDIVIDUALS, PARTNERSHIPS, LIMITED LIABILITY COMPANIES, TRUSTS, CORPORATIONS AND OTHER LEGAL ENTITIES THAT JENKENS & GILCHRIST OR ANY JENKENS & GILCHRIST ATTORNEY ADVISED CONCERNING, THAT WERE FORMED IN CONNECTION WITH, OR THAT ENGAGED OR WERE UTILIZED IN ANY ONE OR MORE OF THE TAX STRATEGIES. THE "CLASS" EXCLUDES, HOWEVER, ANY PERSONS DESCRIBED IN (1), (2) AND (3) WHO HAVE RELEASED ALL RELEASED CLAIMS AGAINST THE J&G DEFENDANTS.

PURPOSE OF THIS NOTICE

THIS NOTICE IS TO INFORM YOU ABOUT CERTAIN PENDING LAWSUITS AND A PROPOSED SETTLEMENT OF CLAIMS AGAINST JENKENS & GILCHRIST AND ITS SHAREHOLDERS (INCLUDING PAUL DAUGERDAS, ERWIN MAYER AND DONNA GUERIN). THE CLAIMS HAVE BEEN ASSERTED ON BEHALF OF A CLASS OF CERTAIN FORMER JENKENS & GILCHRIST CLIENTS, THEIR JOINT TAX-FILERS AND RELATED ENTITIES. YOU HAVE BEEN IDENTIFIED AS A MEMBER OF THE CLASS. AS A RESULT OF THE PROPOSED SETTLEMENT, YOU MAY BE ELIGIBLE TO RECEIVE A SUM OF

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[1] "Jenkens & Gilchrist" means Jenkens & Gilchrist, a Texas Professional Corporation, Jenkens & Gilchrist, an Illinois Professional Corporation, Jenkens & Gilchrist Parker Chapin LLP, a New York limited liability partnership, and Jenkens & Gilchrist LLP, a California limited liability partnership.

[2] For purposes of the settlement, the term "Tax Strategies" means those tax-reducing strategies that are the basis of the *Denney*, *Camferdam* and *Riggs* suits (as hereinafter define), as well as all other tax-reducing strategies advised upon or opined about by any of the J&G Defendants [defined later herein] involving (a) basis-enhancing investment transactions, (b) basis-enhancing derivatives structures, (c) basis leveraged investment swap spreads, (d) hedge option monetization of economic remainders, (e) basis adjustment remainder trusts, (f) gain option partnerships, or (g) other basis-enhancing, basis-preserving, and / or gain-avoidance transactions utilizing options and / or indebtedness and involving corporations and / or partnerships. "Tax Strategy" means any one of the foregoing.

MONEY. PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS AS A CLASS MEMBER.

THE COURT EXPRESSES NO OPINION REGARDING THE FAIRNESS OR ADEQUACY OF THE PROPOSED SETTLEMENT OR OF THE MERITS OF ANY PARTY'S CLAIMS OR DEFENSES. THERE HAS BEEN NO DETERMINATION BY ANY COURT, ADMINISTRATIVE AGENCY OR OTHER TRIBUNAL REGARDING THE FACTUAL ALLEGATIONS OR THE PARTIES' LEGAL CLAIMS AND DEFENSES.

CLAIMS ASSERTED AGAINST JENKENS & GILCHRIST

AND CERTAIN OF ITS SHAREHOLDERS

The settlement that is the subject of this notice was negotiated on behalf of the Class by plaintiffs' counsel in the following three pending cases:

- *Thomas Denney, et al. on their own behalf and on behalf of all others similarly situated v. Jenkens & Gilchrist, a Texas Professional Corporation, et al.*, Case No. 03-CV-5460 (SAS), in the United States District Court, Southern District of New York (the "*Denney* suit").
- *Henry N. Camferdam, Jr., et al. on their own behalf and on behalf of all others similarly situated v. Ernst & Young International, Inc., et al.*, Case No. 02-CV-10100 (BSJ), in the United States District Court, Southern District of New York (the "*Camferdam* suit").
- *Jack Riggs et al. v. Jenkens & Gilchrist, et al.*, Case No. 03-6291-C, in County Court at Law No. 3, Dallas County, Texas (the "*Riggs* suit").

(The *Denney*, *Camferdam* and *Riggs* Suits will be collectively referred to as "the Litigation.")

The proposed settlement would resolve the proposed Class's claims against the Jenkens & Gilchrist Defendants[3] for damages arising out of legal advice to each of more than 1,100 persons.

[3] "J&G Defendants" means Jenkens & Gilchrist and all Persons (including Daugerdas, Mayer and Guerin) who, during all or any part of the period January 1, 1998, to date, held the status of director, officer, stockholder, partner, principal, member, owner and/or employee in any of the entities comprising Jenkens & Gilchrist (whether or not any such Person has been sued in any of the Litigation).